

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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EON SHEPHERD,

Plaintiff,

v.

9:10-CV-1524

BRIAN FISCHER, et al.,

Defendants.

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THOMAS J. McAVOY  
Senior United States District Judge

**DECISION and ORDER**

This action, brought pursuant to 42 U.S.C. § 1983, was referred by this Court to the Honorable David E. Peebles, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c).

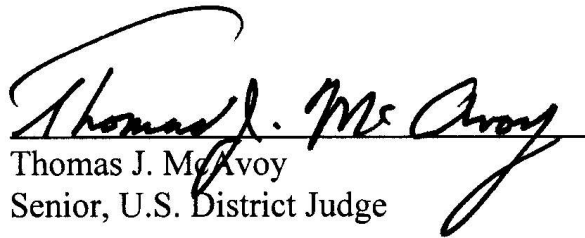
In the Report-Recommendation, Magistrate Judge Peebles recommends that Defendants' Motion for Partial Summary Judgment be granted in part and denied in part. No objections to the Report-Recommendation dated February 23, 2015 have been filed. After examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice. Accordingly, this Court adopts the Report-Recommendation for the reasons stated therein.

For the foregoing reasons, the Court **ADOPTS** the Report and Recommendation and **GRANTS** in part and **DENIES** in part Defendant's Motion for Partial Summary Judgment, dkt. # 174, as follows:

- (1) Plaintiff's damage claims against the defendants in their official capacities are DISMISSED with prejudice;
- (2) Any cause of action based solely upon verbal harassment and threats is DISMISSED with prejudice;
- (3) Plaintiff's denial of court access claims are DISMISSED with prejudice;
- (4) Plaintiff's free exercise and RLUIPA claims asserted against defendant Bellnier are DISMISSED with prejudice;
- (5) Plaintiff's failure to protect claim asserted against defendant Colvin is DISMISSED with prejudice;
- (6) Plaintiff's failure to protect claim asserted against defendant Lempke is DISMISSED with prejudice;
- (7) Plaintiff's deliberate medical indifference claims asserted against Defendants Atkinson, Bellnier, Chesbrough, Clemons, Colvin, Fairchild, Holmes, Johson, Lempke, Parmer, Perez, Prebalick, Rock, Roew, Smith, Thomas, Weinstock, and Weissman are DISMISSED with prejudice;
- (8) Plaintiff's claims against the John Doe Defendants are DISMISSED with prejudice;
- (9) Plaintiff's claims against Defendants Whipple, Jones, Basket and Cusak are DISMISSED without prejudice, based on the fact that those Defendants were not served with the summons and complaint within sixty days of the filing of Plaintiff's complaint; and
- (10) Defendants motion is DENIED in all other respects.

**IT IS SO ORDERED.**

**DATED: March 18 , 2015**

  
Thomas J. McAvoy  
Senior, U.S. District Judge